

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application Number	10/090,574
		Filing Date	03/05/2002
		First Named Inventor	Landau
		Group Art Unit	1615
		Examiner Name	H.N. Sheikh
Total Number of Pages in This Submission		Attorney Docket Number	

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Remarks Appeal Brief		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or individual name	LaMorte & Associates
Signature	
Date	09/21/2005

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 09/21/2005

Typed or printed name	Eric A. LaMorte		
Signature		Date	09/21/2005

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO/SB/17 (10-04v2)

FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 250)

Complete if Known

Application Number	10/090,574
Filing Date	03/05/2002
First Named Inventor	Landau
Examiner Name	H.N. Sheikh
Art Unit	1615
Attorney Docket No.	Landau-9

METHOD OF PAYMENT (check all that apply)

Check Credit card Money Order Other None

Deposit Account:

Deposit Account Number 50-1954
Deposit Account Name Lamorte & Associates

The Director is authorized to: (check all that apply)

Charge fee(s) indicated below Credit any overpayments
 Charge any additional fee(s) or any underpayment of fee(s)
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity	Small Entity	Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1001 790	2001 395			Utility filing fee	
1002 350	2002 175			Design filing fee	
1003 550	2003 275			Plant filing fee	
1004 790	2004 395			Reissue filing fee	
1005 160	2005 80			Provisional filing fee	
SUBTOTAL (1) (\$)					

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Independent Claims	Multiple Dependent	Extra Claims	Fee from below	Fee Paid
			-20** =	X	
			-3** =	X	

Large Entity	Small Entity	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 88	2201 44	Independent claims in excess of 3
1203 300	2203 150	Multiple dependent claim, if not paid
1204 88	2204 44	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2) (\$)		

**or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 430	2252 215	Extension for reply within second month	
1253 980	2253 490	Extension for reply within third month	
1254 1,530	2254 765	Extension for reply within fourth month	
1255 2,080	2255 1,040	Extension for reply within fifth month	
1401 340	2401 170	Notice of Appeal	
1402 340	2402 170	Filing a brief in support of an appeal	250
1403 300	2403 150	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,370	2453 685	Petition to revive - unintentional	
1501 1,370	2501 685	Utility issue fee (or reissue)	
1502 490	2502 245	Design issue fee	
1503 660	2503 330	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 790	2809 395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 790	2810 395	For each additional invention to be examined (37 CFR 1.129(b))	
1801 790	2801 395	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	
Other fee (specify)		Pub fee and 5 copies	
*Reduced by Basic Filing Fee Paid		SUBTOTAL (3) (\$) 250	

(Complete if applicable)

Name (Print/Type)	Eric LaMorte	Registration No. (Attorney/Agent)	34653	Telephone	215 321-6772
Signature				Date	09/21/2005

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: : Examiner: **H. N. Sheikh**
Landau :
Serial No.: **10/090,574** : Group Art Unit: **1615**
Filed: **March 05, 2002** : Date: **September 21, 2005**

**For: SYSTEM AND METHOD OF
ADMINISTERING PHARMACEUTICALS
AND NUTRACEUTICALS AS PART OF A
BEVERAGE CONTAINER**

I hereby certify that this correspondence and/or fee is being deposited with the United States Postal Service as First Class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Alexandria, VA in accordance with 37 C.F.R. §1.8, on this day.

(Date of Deposit) *Sept 21, 2005*
(Signature and Date) *LL* *9-21-05*

Mail Stop –Appeal Brief
Commissioner of Patents and Trademarks

APPEAL BRIEF OF APPELLANT

Sir:

The Applicant has filed a Notice Of Appeal. The Applicant herein timely files this Brief in accordance with 37 C.F.R. 41 et seq.

I. REAL PARTY IN INTEREST [37 CFR §41.37(c)(1)]

The subject application is not assigned. As such, the Real Party in Interest is the Applicant.

II. RELATED APPEALS AND INTERFERENCES [37 CFR §41.37(c)(2)]

No other related application is currently subject to an Appeal or Interference.

III. STATUS OF CLAIMS [37 CFR §41.37(c)(3)]

Claims 1- 17 are pending in this application.

Claims 1 - 17 stand as finally rejected by the Examiner.

IV. STATUS OF THE AMENDMENTS [37 CFR §41.37(c)(4)]

The amendment filed by the Applicant on January 03, 2005 was entered by the Examiner. No other amendments were filed.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER [37 CFR §41.37(c)(5)]

The subject application has two pending independent claim, which are Claim 1 and Claim 12. All other claims depend from these three dependent claims.

Claim 1 sets forth a method of administering a biologically beneficial compound. (*See preamble of Claim 1*) The method requires the step of providing a beverage container (**10, Fig. 1**) having a cap assembly (**14, Fig. 1**) through which liquid (**22, Fig. 1**) in the beverage container (**10**) is drunk. The cap assembly (**14**) has at least one exterior surface that passes into a drinker's mouth when liquid is drunk through the cap assembly (**14**). (*See Summary, page 5, line 4-8*)

A mass of a biologically beneficial compound (**20**) is formed on an exterior surface of the cap assembly (**12**). (*See Specification, page 7, lines 19-22*) The mass of biologically beneficial compound (**20**) passes into the mouth of a person drinking from the beverage container through the cap assembly (**14**). (*See Specification, page 9, lines 6-8*)

Using the method of Claim 1, it will be understood that a cap assembly (**14**) is provided that has a biologically beneficial compound (**20**) disposed on its exterior. In this manner, when the cap assembly (**12**) is placed in the mouth, the biologically beneficial compound (**20**) is placed in the mouth. The biologically beneficial compound can then be consumed. (*See Specification,*

page 9, lines 6-8) However, prior to being placed within the mouth, the biologically beneficial compound (20) is isolated from the liquid that passes through the cap assembly (14). *(See specification, page 8, lines 10-14)*

Claim 12 sets forth a method similar to Claim 1, however the step of providing a bottle (12, *Fig. 1*) containing a consumable liquid (22) is positively claimed. *(See Claim 12, first claimed element)* provided. A cap assembly (14) for the bottle is also provided. The cap assembly (14) can be selectively opened and the consumable liquid (22) drunk from the bottle (12) through the cap assembly. A consumable material (20) is provided on an exterior surface of the cap assembly (14). *(See Specification, page 7, lines 19-20)* The consumable material (20) passes into the mouth when the liquid (22) is drunk directly from the cap assembly (14). *(See Specification, page 9, lines 6-8)*

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL [37 CFR §41.37(c)(6)]

The grounds of rejection to be reviewed on appeal are as follows:

1. - **Claims 1-17 stand rejected under 35 USC 103(a) as being anticipated by U.S. Patent No. 5,456,351 to Johnson.**

- 2.- **Claims 1-17 stand rejected under 35 USC 103(a) as being anticipated by U.S. Patent No. 6,527,109 to Schoo.**

VII. ARGUMENTS. [37 CFR §41.37(c)(7)]

GROUND 1 - Whether the Examiner erred in finally rejecting Claims 1-17 under 35 USC 103(a) as being disclosed by U.S. Patent No. 5,456,351 to Johnson.

The rejected claims include two pending independent claims, which are Claim 1 and Claim 12. These claims are believed to be clearly distinguishable over the cited prior art references, as is explained below.

Claim 1

Claim 1 sets forth a method of administering a biologically beneficial compound. The method requires the step of providing a beverage container having a cap assembly through which liquid in the beverage container is drunk. The cap assembly has at least one exterior surface that passes into a drinker's mouth when liquid is drunk through the cap assembly.

A mass of a biologically beneficial compound is formed on an exterior surface of the cap assembly. The mass of biologically beneficial compound passes into the mouth of a person drinking from the beverage container through the cap assembly.

Using this method, it will be understood that a beverage container cap is provided that has a biologically beneficial compound disposed on the exterior of the cap. In this manner, when the cap is placed in the mouth, the biologically beneficial compound is placed in the mouth. The biologically beneficial compound can then be consumed. However, prior to being placed within

the mouth, the biologically beneficial compound is isolated from the liquid that passes through the cap.

The Johnson patent discloses a lid for a container that can be peeled off the container. The lid has two halves that define a pocket. Within the pocket can be kept a secondary edible product. To use the device, the lid is partially peeled open to remove the secondary edible product. The lid is then completely peeled away to expose the contents of the container. See Johnson, the method sequence represented by Fig. 2, Fig. 3 and Fig. 4 with accompanying description.

The Johnson patent does not disclose or suggest the step of providing a beverage container having a cap assembly through which liquid from the beverage container is drunk. Rather, in the Johnson patent, the lid must be removed. Nothing is consumed through the lid.

The Johnson patent does not disclose or suggest the step of providing a cap assembly having at least one exterior surface that passes into a drinker's mouth when liquid is drunk through the cap assembly. As has been stated, the Johnson lid must be removed from the container before anything can be drunk from the container.

The Johnson patent does not disclose or suggest the step of forming a mass of a biologically beneficial compound on an exterior surface the cap assembly. Rather, in the Johnson patent, a secondary object is merely held within a pocket inside the lid.

Lastly, the Johnson patent does not disclose or suggest the step of having the mass of biologically beneficial compound pass into the mouth of a person drinking with the cap assembly. Rather, The Johnson patent clearly shows that the secondary object is completely removed from the lid before it is used.

As a result, it can be seen that Johnson patent fails to show a single method step set forth by Claim 1. The Johnson patent therefore clearly does not disclose the matter of Claim 1 and the 35 USC 103 rejection should be withdrawn.

Claim 12.

Claim 12 sets forth a method similar to Claim 1. In the method of Claim 12, a bottle containing a consumable liquid is provided. A cap assembly for the bottle is also provided. The cap assembly can be selectively opened and the consumable liquid drunk from the bottle through the cap assembly.

A consumable material is provided on **an exterior surface** of the cap assembly. The consumable material passes into the mouth when the liquid is drunk directly from the cap assembly.

The Johnson patent does not disclose or suggest the step of providing a bottle having a cap assembly through which liquid is drunk. Rather, in the Johnson patent, the lid must be removed. Nothing is consumed through the lid.

The Johnson patent does not disclose or suggest the step of providing a cap assembly having at least one exterior surface that passes into a drinker's mouth when liquid is drunk through the cap assembly. As has been stated, the Johnson lid must be removed from the container before anything can be drunk from the container

The Johnson patent does not disclose or suggest the step of providing consumable material on an exterior surface the cap assembly. Rather, in the Johnson patent a secondary

object is merely held within a pocket inside the lid.

Lastly, the Johnson patent does not disclose or suggest the step of having the consumable material pass into the mouth of a person drinking from the beverage container through the cap assembly.

As a result, it can be seen that Johnson patent fails to disclose the method steps set forth by Claim 12. The Johnson patent therefore clearly does not anticipate the matter of Claim 12 and the 35 USC 103 rejection should be withdrawn.

GROUND 2 - Whether the Examiner erred in finally rejecting Claims 1-17 under 35 USC 103(a) as being disclosed by U.S. Patent No. 6,527,109 to Schoo.

The rejected claims include two pending independent claims, which are Claim 1 and Claim 12. These claims are believed to be clearly distinguishable over the cited prior art references, as is explained below.

The Schoo patent discloses a cap for a beverage bottle that has a liquid-dissolvable disk that is held within the structure of the cap. The disk dissolves in the beverage when the beverage bottle is shaken. See Abstract of Schoo patent.

Claim 1

As applied to the wording of pending Claim 1, the Schoo patent does not disclose or suggest the method step of forming a mass of a biologically beneficial compound on an exterior

surface the cap assembly. Rather, in the Schoo patent, a dissolvable disk is disposed on the interior of the cap and dissolves with the beverage when the beverage is shaken. This is directly opposite to the present invention that attempts to isolate the biologically beneficial material from the beverage until it is consumed.

Furthermore, the Schoo patent does not disclose or suggest the method step of having the mass of biologically beneficial compound pass into the mouth of a person drinking with the cap assembly. Rather, the Schoo patent clearly shows that the dissolvable disk is inside the cap and does not have any direct contact with the drinker's mouth.

As a result, it can be seen that Schoo patent fails to show or suggest the method steps set forth by Claim 1. The Schoo patent therefore clearly does not disclose the matter of Claim 1 and the 35 USC 103 rejection should be withdrawn.

Claim 12

As applied to the wording of pending Claim 12, the Schoo patent does not disclose or suggest the method step of providing consumable material on an exterior surface the a cap assembly. Rather, in the Schoo patent, a dissolvable disk is disposed on the interior of the cap and dissolves with the beverage when the beverage is shaken.

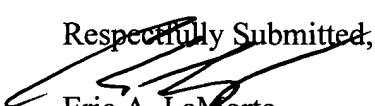
Furthermore, the Schoo patent does not disclose or suggest the method step of having the consumable material pass into the mouth of a person drinking from the beverage container through the cap assembly. Rather, the Schoo patent clearly shows that the dissolvable disk is inside the cap and does not have any direct contact with the drinker's mouth.

As a result, it can be seen that Schoo patent fails to show or suggest the method steps set

forth by Claim 12. The Schoo patent therefore clearly does not anticipate the matter of Claim 12 and the 35 USC 102 rejection should be withdrawn.

CONCLUSION

The Applicant's brief is believed to be in full compliance with 37 C.F.R. §41.37 et seq. The Examiner's 35 U.S.C. §103 rejections are not supported by the cited references. The Board is therefore requested to cause the Examiner to remove the rejections and allow the remaining pending claims.

Respectfully Submitted,

Eric A. LaMorte
Reg. No. 34,653
Attorney for Applicant

LaMorte & Associates, P.C.
P.O. BOX 434
Yardley, PA 19067

VIII. CLAIMS APPENDIX [37 CFR 41.47(c)(8)].

The pending claims stand as follows:

12. A method, comprising the steps of:

providing a bottle containing a consumable liquid;

providing a cap assembly for said bottle, wherein said cap assembly has at least one exterior surface, and wherein said cap assembly can be selectively opened and said consumable liquid drunk from said bottle through said cap assembly;

providing a consumable material on said at least one exterior surface of said cap assembly, wherein said consumable material passes into the mouth when said consumable liquid is drunk directly from said cap assembly.

13. The method according to Claim 12, wherein said step of providing a consumable material includes compressing powdered material into a solid form on said at least one exterior surface of said cap assembly.

14. The method according to Claim 12, wherein said step of forming a mass includes molding molten material around said at least one exterior surface of said cap assembly and allowing said molten material to solidify.

15. The method according to Claim 12, wherein said step of forming a mass includes forming an annular structure, and said method includes attaching said annular structure to said at least one exterior surface of said cap assembly.

16. The method according to Claim 12, wherein said consumable material is selected from a group consisting of pharmaceutical compounds and nutraceutical compounds.

17. The method according to Claim 12, wherein said consumable material is not completely soluble in said consumable liquid.